

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: UTILICORP UNITED INC.	DOCKET NO. WRU-99-47-225
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ORDER GRANTING WAIVER

(Issued February 24, 2000)

On October 27, 1999, UtiliCorp United Inc. (UtiliCorp) filed with the Utilities Board (Board) an application for waiver of Iowa Code §§ 476.76 and 476.77 (1999) and 199 IAC chapter 32. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a conditional objection and response on November 1, 1999. Consumer Advocate said it needed to conduct discovery to ascertain whether the application for waiver should be granted. On January 31, 2000, Consumer Advocate notified the Board discovery was completed, and Consumer Advocate withdrew its conditional objection.

UtiliCorp proposes to merge with Empire District Electric Company (Empire), an electric utility with 143,000 customers doing business in Missouri, Kansas, Arkansas, and Oklahoma. After the merger, UtiliCorp will be the surviving corporation and Empire will become an operating unit of UtiliCorp. The proposed merger is valued at approximately \$800 million.

UtiliCorp is a Delaware corporation with its principal place of business in Missouri. UtiliCorp operates in the state of Iowa through one of its operating

divisions, Peoples Natural Gas Company. UtiliCorp does not provide electric service in Iowa.

Iowa Code § 476.76 (1999) provides "reorganization" means the acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets. Neither the statutes nor the rules found in 199 IAC chapter 32 limit the Board's jurisdiction to acquisitions or sales of Iowa assets.

UtiliCorp's proposed transaction exceeds the \$5 million or 3 percent of Iowa revenue threshold for the acquisition of assets contained in 199 IAC 32.2(1) and does not qualify as an exempt transaction pursuant to 199 IAC 32.2(3). However, Iowa Code § 476.77 (1999) states the Board "may waive the requirements of this section, if the board finds that board review is not necessary in the public interest." The standards for review in section 476.77 indicate the important questions are the impact of the acquisition on the utility's ability to attract capital, the utility's ratepayers, and the public interest generally.

None of the assets involved in the merger are located in Iowa and none are subject to rate or service regulation by the Board. Service to Iowa customers will not be affected and the transaction should not impact the utility's ability to attract capital. In 1998, UtiliCorp posted sales of \$12.6 billion and had assets of \$5.9 billion. For a utility this size, the acquisition of a relatively small traditional utility like Empire should have no impact on UtiliCorp's Iowa operations. Based on the representations made

by UtiliCorp in its application for waiver, the Board finds UtiliCorp has established that Board review of the proposed transaction is not necessary in the public interest. A waiver of Iowa Code §§ 476.76 and 476.77 and 199 IAC chapter 32 will be granted.

IT IS THEREFORE ORDERED:

UtiliCorp United Inc.'s application for waiver, filed October 27, 1999, is granted. The application of Iowa Code §§ 476.76 and 476.77 (1999) and 199 IAC chapter 32 to the transaction discussed in the body of this order is waived.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 24th day of February, 2000.